

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (L) NO. 515 OF 2006

IN

NOTICE OF MOTION NO. 3316 OF 2002

IN

SUIT NO.3853 OF 2002

Bipin H. Shah .. Appellants

V/s

M/s Tarla Marjaria & Ors. .. Respondents

Mr.M.P.S. Rao i/b Rustamji & Giniwala for the Appellants.

Mr.Sanjay Jain i/b KMC Legal Venture for the Respondents.

CORAM : H.L. GOKHALE & J.P. DEVADHAR, JJ.

DATE : 18TH AUGUST 2006

**P.C. :**

1. Heard Mr.Rao for the Appellants and Mr.Jain for the Respondents.

2. The appeal seeks to challenge the interim order passed by a learned Single Judge on 5th June 2006 in a suit filed by the Respondents.

3. The case of the Respondents - Plaintiffs is that they are the owners of Flat No.13 situated in Krishna Building, 6th Khetwadi Road, S.V.P. Road, Mumbai. The Appellants are supposed to be occupying two rooms in the front portion of this flat through a relative of Respondents - Plaintiffs, who was earlier in that flat and who has since handed over that flat back to the Respondents - Plaintiffs. A suit is filed to evict the Appellants and in that a motion has been taken out seeking an injunction not to transfer, encumber or alienate the part of this flat which is with the Appellants and then there is also a prayer for fixing the mesne profit and appointment of the Receiver.

4. The learned Single Judge, after hearing the motion, appointed the Receiver, High Court, Bombay as the Receiver for the premises. However, noting that the Appellants are in these premises since about 1972, the Appellants are continued in the premises as agents of the Receiver. The Receiver has been directed to decide as to what should be the compensation to occupy the premises. It is this part of the order by which the Appellants are aggrieved.

5. Mr.Rao, learned counsel appearing for the Appellants, submits that the rent of the premises was very nominal and what the Respondents - Plaintiffs are

asking is an amount of Rs.9653/- per month by way of mesne profit. That will create great hardship to the Appellants. That is an aspect which will have to be gone into by the Receiver and his representative. As and when the amount is decided, if the Appellants are aggrieved, it will be open to them to approach the learned Single Judge to have the amount refixed as per their submissions, which of course will be decided after hearing the Respondents - Plaintiffs.

5. In view of the above, there is no reason to interfere with the order impugned. Appeal is dismissed.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR J.)